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9 JASON EDWARD THOMAS CARDIFF

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11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,  
14 Plaintiff,  
15 vs.

16 JASON EDWARD THOMAS  
17 CARDIFF

Case No. 5:23-CR-00021-JGB

JASON CARDIFF'S REPLY  
MEMORANDUM IN SUPPORT OF  
MOTION TO SET ASIDE OR  
MODIFY JUDGMENT

Hearing Date:, May 5, 2025

Courtroom: 1

Time: 2:00 p.m.

18  
19 **REPLY MEMORANDUM IN SUPPORT OF JASON CARDIFF'S MOTION**  
20 **TO SET ASIDE JUDGMENT**

21 Defendant respectfully submits his Reply Memorandum.

22 **A. The Bond and Mr. Cardiff's Health**

23  
24 The Government goes to great lengths to emphasize that Defendant has willfully  
25 breached the Court's order to return to the United States. It is true that Defendant had  
26 to make a difficult choice to either fly back to the United States and run the risk of  
27 inflicting permanent harm to his health or remain in Ireland and get treatment for his  
28 condition. Defendant has received extensive treatment and has lodged a detailed and

1 comprehensive medical report from Dr. Bui, MBChB, FRCP, MRCGP, one of his  
2 treating physicians, to explain the treatment and the length of time required for  
3 treatment. Dr. Bui's report confirms that Mr. Cardiff was not medically fit to fly, that  
4 his condition is severe, requires consistent intensive outpatient treatment and that Mr.  
5 Cardiff has continuously and consistently been in treatment for medical problems as  
6 previously reported to the Court. This report should be viewed as a matter in mitigation  
7 of Defendant's breach of the Court's order.

### 8 **B. Contacts with Pretrial Services**

9 Similarly, the Government has mistakenly asserted that Defendant has not  
10 remained in touch with Pretrial Services. According to Ms. Cathleen Torres, "Mr.  
11 Cardiff has not had consistent contact with PSA. Last email reply from PSO Ryan  
12 McClellan to the defendant is dated 2/20/25. Prior to that, he last emailed was on  
13 1/25/25. No further communication has been received." Contrary to Ms. Torres' email,  
14 Defendant has remained in touch with Pretrial Services. **Exhibit A**, Cardiff  
15 Declaration, ¶ 4, Exhibits 1, 2. Ms. Torres did not advise Mr. Cardiff that she was his  
16 newly assigned Pretrial Services Officer. Id. at ¶ 5.

### 17 **C. Due Process and Pending Motions**

18 In response to Defendant's contention that due process requires the Court resolve  
19 pending dispositive motions to determine reasonableness of the original bond, the  
20 Government simply asserts that all the motions were frivolous. Dkt. 225 at 16. In  
21 fact, the motions are supported by law and extensive analysis.

22 Federal Rule of Criminal Procedure 46(f)(2) provides that a court "may set aside  
23 in whole or in part a bail forfeiture... if it *appears* that justice does not require bail  
24 forfeiture." (emphasis supplied) The rule confers broad judicial discretion grounded in  
25 equity and fairness, and the Ninth Circuit has consistently held that district courts must  
26 weigh the totality of the circumstances when determining whether enforcement is just.  
27 See *United States v. Castaldo*, 667 F.2d 20, 21 (9th Cir. 1981); *United States v. Amwest*  
28

1 *Surety Ins. Co.*, 54 F.3d 601, 603 (9th Cir. 1995). This includes considering whether  
2 the procedural posture of the underlying criminal case renders immediate forfeiture  
3 inequitable. *See United States v \$8850 in United States Currency*, 461 U.S. 555, 564  
4 (1983) (Due process is flexible regarding the right to be heard at a meaningful time  
5 recognizing that the timing of a proceeding may impair and unfairly prejudice a party's  
6 ability to defend the propriety of a forfeiture).

7 Here, the government seeks to enforce bond forfeiture against Defendant (and  
8 two private sureties) while four dispositive motions remain pending before the Court:

- 9 1. Motion to Dismiss Counts 3 and 4 of the Indictment – Asserts a failure to  
10 establish the required nexus between the alleged conduct and any official  
11 proceeding under *United States v. Aguilar*, 515 U.S. 593 (1995), and  
12 *Arthur Andersen LLP v. United States*, 544 U.S. 696 (2005).
- 13 2. Motion to Dismiss Based on Double Jeopardy – Argues that the  
14 government's civil enforcement under Section 13(b) of the FTC Act  
15 resulted in punitive sanctions, including an unlawful receivership, and that  
16 this subsequent prosecution violates the Double Jeopardy Clause under  
17 *Hudson v. United States*, 522 U.S. 93 (1997).
- 18 3. Motion to Dismiss Count Two Under *Dubin* – Relies on *Dubin v. United*  
19 *States*, 599 U.S. 110 (2023), in which the Supreme Court significantly  
20 narrowed the scope of 18 U.S.C. § 1028A(a)(1), and shows that the  
21 government's theory of "aggravated identity theft" does not meet the  
22 statutory standard.
- 23 4. Motion to Suppress Evidence – Demonstrates that critical evidence was  
24 seized through unlawful warrantless searches in violation of the Fourth  
25 Amendment. The motion details multiple constitutional defects in the  
26 government's execution of searches with the cooperation of a Receiver  
27 who lacked legal authority to consent.  
28

1 Moreover, Defendant has filed a Motion to Dismiss Indictment Based on Fraud  
2 on the Court. Dkt. 231. This motion is based on recently discovered evidence.

3 Each of these motions presents a substantive constitutional or legal challenge that  
4 could either eliminate the underlying charges or materially alter the government's  
5 evidentiary posture. It is clear that if one or more of these motions is granted—  
6 particularly the motions challenging the indictment's legal sufficiency or seeking  
7 suppression of foundational evidence—the government's case may be dismissed or  
8 significantly narrowed. In that scenario, failure to remit the judgment for defendant and  
9 third-party sureties would be premature and punitive.

10 As the Ninth Circuit noted in *United States v. Nguyen*, 279 F.3d 1112 (9th Cir.  
11 2002), the purpose of bond is to ensure the defendant's appearance and compliance  
12 with court orders—not to impose punishment on sureties where fundamental fairness  
13 and procedural integrity are compromised.

14 Moreover, Rule 46(f)(2)'s use of the word “appears” imposes a deliberately low  
15 threshold: it authorizes a court to set aside forfeiture based on equitable indications that  
16 continuing enforcement would be unjust. See Sureties' Reply in Support of Motion to  
17 Set Aside Judgment, Dkt. 224, at 5–8 (arguing that the term “appears” reflects a policy  
18 of leniency for lay sureties and permits relief absent definitive proof).

19 To enforce a bond forfeiture judgment in this context—where the legality of the  
20 charges and the admissibility of the government's evidence are actively under review—  
21 would result in disproportionate, and potentially irreversible financial harm to the  
22 sureties. It would also contravene Rule 46's remedial purpose and elevate procedural  
23 form over equitable substance.

24 If the indictment is dismissed or materially undermined, justice would not require  
25 that private Defendant or the sureties absorb the costs of a prosecution that failed to  
26 survive constitutional scrutiny. Accordingly, the Court should either set aside the  
27 judgment or defer the matter until the pending dispositive motions are fully resolved.  
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